

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Tessa Yesselman	Team: Squad #3	CCRB Case #: 201803415	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 04/22/2018 3:05 PM	Location of Incident: In front of 1170 East 229th Street	Precinct: 47	18 Mo. SOL 10/22/2019	EO SOL 10/22/2019	
Date/Time CV Reported Sun, 04/22/2018 11:18 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 05/01/2018 1:43 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Jhonatan Delcarmenmercedes	22099	959584	PSA 8
2. POM Kyron Delarosa	11960	960431	047 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Francine Gonzalez	15574	933199	PSA 8
2. POM Ryan Duffany	04399	960483	047 PCT
3. POM Xavier Sanchez	15705	958051	PSA 8
4. POM Joel Hernandez	16157	957671	PSA 8

Officer(s)	Allegation	Investigator Recommendation
A.POM Jhonatan Delcarmenmercedes	Force: Police Officer Jhonatan Del Carmen Mercedes used physical force against § 87(2)(b)	
B.POM Kyron Delarosa	Discourtesy: Police Officer Kyron De La Rosa spoke discourteously to § 87(2)(b)	
C.POM Kyron Delarosa	Force: Police Officer Kyron De La Rosa used physical force against § 87(2)(b)	
D.POM Kyron Delarosa	Force: Police Officer Kyron De La Rosa used physical force against § 87(2)(b)	

### Case Summary

On April 22, 2018, § 87(2)(b) filed this complaint with IAB (log no. 2018-15990) (01 Board Review). This case was subsequently received by the CCRB on May 1, 2018.

On April 22, 2018, at approximately 2:24 PM, Police Officer Francine Gonzalez and Police Officer Jhonatan Del Carmen Mercedes, both of PSA 8, were responding to a call for a larceny in progress in the vicinity of 1170 East 229<sup>th</sup> Street. Police Officer Kyron De La Rosa and Police Officer Ryan Duffany, both of the 47<sup>th</sup> Precinct, also responded to the location. § 87(2)(b) was subsequently arrested in regards. PO Del Carmen Mercedes brought § 87(2)(b) to the ground (**Allegation A: Force, § 87(2)(g)**). While affecting the arrest of § 87(2)(b) PO De La Rosa told § 87(2)(b) to, “Get the fuck on the floor, get the fuck on the floor... Put your fucking hands behind your back” (**Allegation B: Discourtesy, § 87(2)(g)**). PO De La Rosa allegedly hit § 87(2)(b)'s head against the pavement (**Allegation C: Force, § 87(2)(g)**), and then punched § 87(2)(b) in the face (**Allegation D: Force, § 87(2)(g)**).

§ 87(2)(b) was arrested and charged with grand larceny in the fourth degree, criminal possession of stolen property in the fourth degree, resisting arrest, obstruction of governmental administration, and criminal mischief (**16 Board Review**).

The investigation obtained body worn camera footage of this investigation.

### Findings and Recommendations

#### **Allegation (A) Force: Police Officer Jhonatan Del Carmen Mercedes used physical force against § 87(2)(b)**

§ 87(2)(b) (**02 Board Review**) stated that he exited the subway at the Baychester Avenue 2 and 5 train stop in the Bronx, and was walking to his home, located at § 87(2)(b), in the Bronx. § 87(2)(b)

§ 87(2)(b) observed a marked police van as he approached 1170 East 229<sup>th</sup> Street. PO Del Carmen Mercedes and PO Gonzalez exited the van, and told § 87(2)(b) not to move. § 87(2)(b) turned and ran towards a park located across the street from 1170 East 229<sup>th</sup> Street, away from PO Del Carmen Mercedes and PO Gonzalez. § 87(2)(b) ran because the police often harass him, and he had not done anything wrong. PO Del Carmen Mercedes caught up to § 87(2)(b) and pulled him to the ground by the hood of his sweatshirt. Both § 87(2)(b) and PO Del Carmen Mercedes fell to the ground. PO Del Carmen Mercedes fell on top of § 87(2)(b) and tried to pull his arms behind his back.

PO Del Carmen Mercedes (**14 Board Review**) stated that he and PO Gonzalez responded to a call for a larceny of a vehicle in progress, in the vicinity of East 229<sup>th</sup> Street and Baychester Avenue. At the time of his CCRB interview, PO Del Carmen Mercedes did not recall the description given for the suspect of the larceny, but remembered that the description included a plastic bag, which was said to contain stolen items from the vehicle. PO Del Carmen Mercedes and PO Gonzalez were one block away from the incident location, so they arrived at the location less than one minute later, and saw § 87(2)(b) walking, and carrying a bag. § 87(2)(b) matched the description

§ 87(2)(b) PO Del Carmen Mercedes and PO Gonzalez exited their vehicle, and § 87(2)(b) ran. PO Del Carmen Mercedes and PO Gonzalez ran after § 87(2)(b). At some point while § 87(2)(b) ran, he threw the plastic bags he was carrying. PO Del Carmen Mercedes caught up to § 87(2)(b) first. PO Del Carmen Mercedes attempted to pull § 87(2)(b) to the ground from behind, but § 87(2)(b) angled his body away from PO Del Carmen Mercedes, so PO Del Carmen Mercedes tackled § 87(2)(b) on his side. Both PO Del Carmen Mercedes and § 87(2)(b) fell to the ground. PO Del Carmen Mercedes hit his head on the ground, and sustained a laceration to the right side of his head. PO Del Carmen Mercedes was lightheaded, and tried to use his body weight to hold § 87(2)(b) on the ground, so that he could be handcuffed. § 87(2)(b) kept trying to get up, tensed his body, and refused to put his hands behind his back. PO Del Carmen Mercedes did not use any additional physical force against § 87(2)(b).

The TRI prepared by PO Del Carmen Mercedes (**07 Board Review**) shows that PO Del Carmen Mercedes was injured while apprehending § 87(2)(b) and that he sustained an abrasion to the right side of his head. The TRI also shows that PO Del Carmen Mercedes used a forcible takedown against § 87(2)(b) and did so because § 87(2)(b) was fleeing, and to overcome resistance and aggression.

PO Del Carmen Mercedes' body worn camera footage fell off, and did not capture the point at which PO Del Carmen Mercedes' first interacted with § 87(2)(b) and when he took § 87(2)(b) to the ground (**03 Board Review**).

PO Gonzalez (**11 Board Review**) provided a statement largely consistent with PO Del Carmen Mercedes', except where noted. § 87(2)(b)

§ 87(2)(b) began running, and PO Del Carmen Mercedes and PO Gonzalez ran after him. § 87(2)(b) threw the plastic bag he was carrying. PO Del Carmen Mercedes caught up to § 87(2)(b) first. PO Del Carmen Mercedes and § 87(2)(b) both fell to the ground. PO Gonzalez did not see specifically how PO Del Carmen Mercedes and § 87(2)(b) fell to the ground.

According to Patrol Guide Procedure 221-02, an officer may use only the reasonable force necessary to gain control or custody of a subject (**20 Board Review**).

§ 87(2)(g), § 87(2)(b)

**Allegation (B) Discourtesy: Police Officer Kyron De La Rosa spoke discourteously to**

§ 87(2)(b)

§ 87(2)(b) (02 Board Review) stated that after PO Del Carmen Mercedes brought him to the ground, that PO De La Rosa repeatedly instructed him to put his hands behind his back. § 87(2)(b) held his arms under his body, and rocked his shoulders back and forth to keep PO Del Carmen Mercedes from gaining control of his arms. PO Del Carmen Mercedes continued to tell § 87(2)(b) to put his arms behind his back, and § 87(2)(b) asked why. § 87(2)(b) was face down on the ground, and heard the footsteps of additional officers, PO De La Rosa and PO Duffany, approaching. As PO De La Rosa approached, he yelled at § 87(2)(b) to put his “fucking” hands behind his back.

PO De La Rosa (12 Board Review) stated that he and PO Duffany responded to a call put over the radio by housing officers to back an arrest for larceny of a vehicle, and the officers were involved in a foot pursuit of the suspect, § 87(2)(b). When PO De La Rosa arrived, he observed PO Gonzalez and PO Del Carmen Mercedes in the middle of a parking lot with § 87(2)(b). PO De La Rosa and PO Duffany ran towards PO Del Carmen Mercedes, PO Gonzalez, and § 87(2)(b). § 87(2)(b) was on his hands and knees on the grounds, trying to stand up. PO Gonzalez was trying to keep § 87(2)(b) on the ground. PO Del Carmen Mercedes was standing to the side of PO Gonzalez and § 87(2)(b) and PO De La Rosa observed PO Del Carmen Mercedes was bleeding from his head. PO De La Rosa did not know how PO Del Carmen Mercedes sustained this injury. PO De La Rosa said that he told § 87(2)(b) to, “Get on the ground,” several times as he approached. PO De La Rosa was then played footage from his body camera, and stated that it was his voice saying, “Get the fuck on the floor, get the fuck on the floor. Get on the floor. Put your hands behind your back. Put your hands behind your back. Put your fucking hands behind your back. Put them behind your back.” PO De La Rosa stated that he said this because § 87(2)(b) was resisting arrest.

PO De La Rosa’s body worn camera (04 Board Review) shows that at :19 seconds, he exits his vehicle and begins running towards PO Del Carmen Mercedes, PO Gonzalez, and § 87(2)(b). PO De La Rosa runs across the street, and enters a parking lot. Audio begins at the :30 mark, and PO De La Rosa is still running. PO De La Rosa makes physical contact with § 87(2)(b) at :34, where he is pictured placing his hand against § 87(2)(b)’s back. At this point PO De La Rosa is heard saying, “Get the fuck on the floor, get the fuck on the floor. Get on the floor. Put your hands behind your back. Put your hands behind your back. Put your fucking hands behind your back. Put them behind your back. Put your hands behind your back. Put your hands behind your back. Put your hands behind your back.”

According to Patrol Guide Procedure 203-10, officers are prohibited from using discourteous or disrespectful remarks (19 Board Review). Deputy Commissioner of Trials case 2017-17276 (21 Board Review) states that during a violent and stressful street encounter, “Language which would ordinarily be inappropriate in dealing with civilians may be excused.”

PO De La Rosa was responding to a call for officers in need of assistance, in a foot pursuit. Body Camera footage of PO De La Rosa shows § 87(2)(b) on the ground, attempting to stand up, as PO Del Carmen Mercedes and PO Gonzalez try to bring him to the ground. § 87(2)(g)

§ 87(2)(g)

**Allegation (C) Force: Police Officer Kyron De La Rosa used physical force against § 87(2)(b)**

§ 87(2)(b) (02 Board Review) stated that after PO Del Carmen Mercedes took him to the ground, he held his arms under his body. As PO De La Rosa and PO Duffany approached § 87(2)(b) and PO De La Rosa and PO De La Rosa yelled at § 87(2)(b) to get the “fuck” down, PO Del Carmen Mercedes tried to pull § 87(2)(b) s arms out from under him. PO Del Carmen Mercedes yelled at § 87(2)(b) to put his arms behind his back. When PO De La Rosa reached § 87(2)(b) PO De La Rosa knelt down by § 87(2)(b) s head, and slammed § 87(2)(b) s head into the pavement.

PO De La Rosa (12 Board Review) stated that he did not hit § 87(2)(b) s head into the pavement.

PO Duffany (13 Board Review), PO Gonzalez (11 Board Review), and PO Del Carmen Mercedes (14 Board Review) did not see PO De La Rosa hit § 87(2)(b) s head into the pavement.

§ 87(2)(b) was transported to the hospital, and diagnosed with subdural hematoma, and psychosis. § 87(2)(b) presented with facial swelling and contusions to his head. § 87(2)(b) stated that he had eye pain, and could not see out of his left eye. § 87(2)(b) also stated at the hospital that he was thrown to the ground by the police, and further stated that he wanted to speak to a psychiatrist because he wanted to hurt himself. Officers at the hospital stated § 87(2)(b) was hitting his head against the car door while inside of the vehicle (09 Board Review, 10 Board Review).

§ 87(2)(g)

**Allegation (D) Force: Police Officer Kyron De La Rosa used physical force against § 87(2)(b)**

§ 87(2)(b) (02 Board Review) stated that after PO De La Rosa hit his head against the pavement, PO De La Rosa punched him in the area of his left eye one to two times.

PO De La Rosa (12 Board Review) stated that when he and PO Duffany reached § 87(2)(b) PO Del Carmen Mercedes was standing to the side of PO Gonzalez and § 87(2)(b) PO Del Carmen Mercedes was injured. § 87(2)(b) was on his knees on the ground, attempting to get up. PO Gonzalez was struggling with § 87(2)(b) trying to get him on the ground. PO De La Rosa tried to push § 87(2)(b) to the ground. § 87(2)(b) was resisting arrest, and swung at PO De La Rosa. PO De La Rosa thought that some of § 87(2)(b)'s punches may have landed on him. PO De La Rosa was not injured by these punches. In return, PO De La Rosa punched § 87(2)(b) "several times" on the left side of § 87(2)(b)'s face, because § 87(2)(b) had punched towards him, and because he was trying to get § 87(2)(b) in handcuffs.

PO Duffany (13 Board Review) did not see PO De La Rosa punch § 87(2)(b) and did not see § 87(2)(b) punch PO De La Rosa.

Neither PO Gonzalez (11 Board Review) nor PO Del Carmen Mercedes (14 Board Review) saw PO De La Rosa punch § 87(2)(b).

According to Patrol Guide Procedure 221-02, an officer may use only the reasonable force necessary to gain control or custody of a subject (20 Board Review).

Patrol Guide Procedure 221-01 defines de-escalation as: Taking action in order to stabilize a situation and reduce the immediacy of the threat so that more time, options, and/or resources become available (e.g., tactical communication, requesting a supervisor, additional MOS and/or resources such as Emergency Service Unit or Hostage Negotiation Team, etc.). The goal is to gain the voluntary compliance of the subject, when appropriate and consistent with personal safety, to reduce or eliminate the necessity to use force (18 Board Review).

PO De La Rosa punched § 87(2)(b) immediately after arriving at the location, and did not attempt to employ any lesser uses of force, or apply any type of de-escalation tactics before punching § 87(2)(b). PO De La Rosa stated that he punched § 87(2)(b) because § 87(2)(b) punched towards him. PO De La Rosa was not injured as a result of his interaction with § 87(2)(b) and PO De La Rosa's partner, PO Duffany, did not see § 87(2)(b) punch towards § 87(2)(b). Body worn camera footage shows that § 87(2)(b) was apparently trying to stand up, but did not present a physical threat to the officers. In addition, § 87(2)(b) was surrounded by four officers. § 87(2)(g)

§ 87(2)(g)

### Civilian and Officer CCRB Histories

- PO De La Rosa has been a member of service for three years, and has thirty previous allegations, with no substantiations. Twenty one of these allegations correspond with three CCRB cases that are currently open (201904126, 201903004, and 201901928). PO De La Rosa has eleven previous allegations of force, and two previous discourtesy allegations.



- PO Del Carmen Mercedes has been a member of service for three years, and has three previous allegations, with no substantiations. § 87(2)(g)
- § 87(2)(b)

### Mediation, Civil and Criminal Histories

- § 87(2)(b), § 87(2)(c) (impair contract awards or CBAs)
- On April 30, 2019, a Notice of Claim Inquiry returned negative results from the NYC Comptroller's Office (**15 Board Review**).

Squad No.: 3

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date
Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date
Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date